

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 627**

Introduced by Brashear, 4

Read first time January 19, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to real estate; to amend section 81-885.24,  
2 Reissue Revised Statutes of Nebraska; to define terms to  
3 prohibit certain acts relating to referral fees; to  
4 provide penalties; to harmonize provisions; and to repeal  
5 the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. For purposes of sections 1 and 2 of this act:

2           (1) Agency contract means a (a) valid written contract  
3 pursuant to subsection (2) or (3) of section 76-2422 authorizing a  
4 person licensed under the Nebraska Real Estate License Act to act  
5 as a party's exclusive agent for the purchase, sale, or lease of  
6 real estate or (b) real estate purchase agreement setting forth an  
7 agency relationship;

8           (2) Agency relationship means the relationship resulting  
9 from an agency contract;

10          (3) Contractual cooperative brokerage relationship means  
11 the contractual agreement by the designated broker of one party to  
12 a real estate transaction to pay compensation to a person licensed  
13 under the Nebraska Real Estate License Act representing the other  
14 party to the transaction or the tender by a designated broker of  
15 one party to a real estate transaction of a unilateral offer to pay  
16 compensation to the licensed person representing the other party of  
17 the transaction accepted by performance;

18          (4) Core real estate services means performing  
19 substantially all of the following acts: Explaining the home  
20 buying and selling process; determining loan qualification;  
21 determining financial ability to purchase or perform; listing  
22 property; developing and implementing a marketing program for the  
23 property; assisting a client in determining the appropriate pricing  
24 or value of a property; providing appropriate background or  
25 information on a property; presenting offers and counteroffers to  
26 seller and buyer; informing clients of known adverse material facts  
27 of the property; advising clients of fair housing and hazardous  
28 material regulations required by law with regard to a property;

1 assessing a property with regard to real estate transfer laws,  
2 rules, and regulations; collecting earnest money; showing a  
3 property; advising buyers and sellers of special conditions of the  
4 property; arranging appointments for sellers, buyers, and  
5 inspections; and delivering proceeds and final disposition and  
6 filing of documents;

7 (5) Real estate business means acting as a seller's agent  
8 or landlord's agent under section 76-2417 or as a buyer's agent or  
9 tenant's agent under section 76-2418;

10 (6) Referral fee means consideration, a commission, or  
11 any other type of compensation for the referral of a potential  
12 buyer, seller, lessor, or lessee of real estate; and

13 (7) Subagency relationship means the relationship between  
14 a primary designated broker and a designated broker resulting from  
15 written agreement or unilateral offer of subagency pursuant to  
16 subsection (5) of section 76-2422.

17 Sec. 2. It is unlawful for any person to:

18 (a) Solicit or request a referral fee from a person  
19 licensed under the Nebraska Real Estate License Act without  
20 reasonable cause. Reasonable cause does not exist unless the party  
21 seeking the referral fee actually introduced the business to the  
22 licensed person from whom the referral fee is sought and at least  
23 one of the following other conditions exists as between the party  
24 seeking the referral fee and the party from whom the referral fee  
25 is sought (i) a subagency relationship, (ii) a contractual referral  
26 fee relationship, or (iii) a contractual cooperative brokerage  
27 relationship. Reasonable cause allows a licensed person to solicit  
28 or request a referral fee but does not necessarily mean that the

1 licensed person has a legal right to be paid a referral fee;

2 (b) Threaten to reduce or withhold employee relocation  
3 benefits or take other action adverse to the interests of a client  
4 of a licensed person because of an agency relationship; or

5 (c) Provide or receive, directly or indirectly, any  
6 consideration for the referral of real estate business except for  
7 core real estate services actually provided and unless one of the  
8 following other conditions exists between the party seeking the  
9 referral fee and the party from whom the referral fee is sought (i)  
10 a subagency relationship, (ii) a contractual referral fee  
11 relationship, or (iii) a contractual cooperative brokerage  
12 relationship. This subdivision shall not prohibit payment of a  
13 portion of a real estate commission or brokerage fee to the client  
14 of the licensed person paying such fee or to another party to the  
15 transaction with advance disclosure to the client of the payment as  
16 an adverse material fact.

17 (2) It is unlawful for a person licensed under the  
18 Nebraska Real Estate License Act, relocation firm, or firm with a  
19 corporate relocation policy or benefits, or anyone on behalf of any  
20 such person or firm, to counsel a client of any other licensed  
21 person on how to terminate or amend an existing agency contract.  
22 Communicating corporate relocation policy or benefits to a  
23 transferring employee shall not be considered a violation of this  
24 section, as long as the communication does not involve advice or  
25 encouragement on how to terminate or amend an existing agency  
26 contract.

27 (3) To be enforceable, any agreement by which a person  
28 licensed under the Nebraska Real Estate License Act commits to pay

1 a referral fee to any other licensed person must be in writing and  
2 signed by both parties.

3 (4) The intent to pay or accept and the payment or  
4 acceptance of referral fees, including the payee and amount, shall  
5 be adverse material facts which shall be disclosed to clients or  
6 prospective clients by a licensed person.

7 (5) Violation of this section is an unfair trade practice  
8 under section 81-885.24 and is subject to disciplinary action by  
9 the Nebraska Real Estate Commission.

10 (6) Violation of this section is a Class IV misdemeanor.

11 Sec. 3. Section 81-885.24, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 81-885.24. The commission may, upon its own motion, and  
14 shall, upon the sworn complaint in writing of any person,  
15 investigate the actions of any broker, associate broker,  
16 salesperson, or subdivider and may censure the licensee or  
17 certificate holder, revoke or suspend any license or certificate  
18 issued under the Nebraska Real Estate License Act, or enter into  
19 consent decrees, whenever the license or certificate has been  
20 obtained by false or fraudulent representation or the licensee or  
21 certificate holder has been found guilty of any of the following  
22 unfair trade practices:

23 (1) Refusing because of race, color, national origin, or  
24 ethnic group to show, sell, or rent any real estate for sale or  
25 rent to prospective purchasers or renters;

26 (2) Intentionally using advertising which is misleading  
27 or inaccurate in any material particular or in any way  
28 misrepresents any property, terms, values, policies, or services of

1 the business conducted;

2 (3) Failing to account for and remit any money coming  
3 into his or her possession belonging to others;

4 (4) Commingling the money or other property of his or her  
5 principals with his or her own;

6 (5) Failing to maintain and deposit in a separate  
7 non-interest-bearing checking account all money received by a  
8 broker acting in such capacity, or as escrow agent or the temporary  
9 custodian of the funds of others, in a real estate transaction  
10 unless all parties having an interest in the funds have agreed  
11 otherwise in writing;

12 (6) Accepting, giving, or charging any undisclosed  
13 commission, rebate, or direct profit on expenditures made for a  
14 principal;

15 (7) Representing or attempting to represent a real estate  
16 broker, other than the employer, without the express knowledge and  
17 consent of the employer;

18 (8) Accepting a commission or other valuable  
19 consideration by an associate broker or salesperson from anyone  
20 other than his or her employing broker without the consent of his  
21 or her employing broker;

22 (9) Acting in the dual capacity of agent and undisclosed  
23 principal in any transaction;

24 (10) Guaranteeing or authorizing any person to guarantee  
25 future profits which may result from the resale of real property;

26 (11) Placing a sign on any property offering it for sale  
27 or rent without the written consent of the owner or his or her  
28 authorized agent;

1           (12) Offering real estate for sale or lease without the  
2 knowledge and consent of the owner or his or her authorized agent  
3 or on terms other than those authorized by the owner or his or her  
4 authorized agent;

5           (13) Inducing any party to a contract of sale or lease to  
6 break such contract for the purpose of substituting, in lieu  
7 thereof, a new contract with another principal;

8           (14) Negotiating a sale, exchange, listing, or lease of  
9 real estate directly with an owner or lessor if he or she knows  
10 that such owner has a written outstanding listing contract in  
11 connection with such property granting an exclusive agency or an  
12 exclusive right to sell to another broker or negotiating directly  
13 with an owner to withdraw from or break such a listing contract for  
14 the purpose of substituting, in lieu thereof, a new listing  
15 contract;

16           (15) Discussing or soliciting a discussion of, with an  
17 owner of a property which is exclusively listed with another  
18 broker, the terms upon which the broker would accept a future  
19 listing upon the expiration of the present listing unless the owner  
20 initiates the discussion;

21           (16) Accepting employment or compensation for appraising  
22 real estate contingent upon the reporting of a predetermined value  
23 or issuing an appraisal report on real estate in which he or she  
24 has an undisclosed interest;

25           (17) Soliciting, selling, or offering for sale real  
26 estate by offering free lots or conducting lotteries for the  
27 purpose of influencing a purchaser or prospective purchaser of real  
28 estate;

1           (18) Paying a commission or compensation to any person  
2 for performing the services of a broker, associate broker, or  
3 salesperson who has not first secured his or her license under the  
4 Nebraska Real Estate License Act unless such person is a  
5 nonresident who is licensed in his or her state of residence;

6           (19) Failing to include a fixed date of expiration in any  
7 written listing agreement and failing to leave a copy of the  
8 agreement with the principal;

9           (20) Failing to deliver within a reasonable time a  
10 completed and dated copy of any purchase agreement or offer to buy  
11 or sell real estate to the purchaser and to the seller;

12           (21) Failing by a broker to deliver to the seller in  
13 every real estate transaction, at the time the transaction is  
14 consummated, a complete, detailed closing statement showing all of  
15 the receipts and disbursements handled by such broker for the  
16 seller, failing to deliver to the buyer a complete statement  
17 showing all money received in the transaction from such buyer and  
18 how and for what the same was disbursed, and failing to retain true  
19 copies of such statements in his or her files;

20           (22) Making any substantial misrepresentations;

21           (23) Acting for more than one party in a transaction  
22 without the knowledge of all parties for whom he or she acts;

23           (24) Failing by an associate broker or salesperson to  
24 place, as soon after receipt as practicable, in the custody of his  
25 or her employing broker any deposit money or other money or funds  
26 entrusted to him or her by any person dealing with him or her as  
27 the representative of his or her licensed broker;

28           (25) Filing a listing contract or any document or



1 instrument purporting to create a lien based on a listing contract  
2 for the purpose of casting a cloud upon the title to real estate  
3 when no valid claim under the listing contract exists;

4 (26) Violating any rule or regulation adopted and  
5 promulgated by the commission in the interest of the public and  
6 consistent with the Nebraska Real Estate License Act;

7 (27) Failing by a subdivider, after the original  
8 certificate has been issued, to comply with all of the requirements  
9 of the Nebraska Real Estate License Act;

10 (28) The broker or salesperson has been convicted of a  
11 felony or entered a plea of guilty or nolo contendere to a felony  
12 charge;

13 (29) Demonstrating negligence, incompetency, or  
14 unworthiness to act as a broker, associate broker, or salesperson,  
15 whether of the same or of a different character as otherwise  
16 specified in this section; ~~or~~

17 (30) Inducing or attempting to induce a person to  
18 transfer an interest in real property, whether or not for monetary  
19 gain, or discouraging another person from purchasing real property,  
20 by representing that (a) a change has occurred or will or may occur  
21 in the composition with respect to religion, race, color, national  
22 origin, age, sex, or marital status of the owners or occupants in  
23 the block, neighborhood, or area or (b) such change will or may  
24 result in the lowering of property values, an increase in criminal  
25 or antisocial behavior, or a decline in the quality of schools in  
26 the block, neighborhood, or area; or

27 (31) Violating section 2 of this act.

28 Sec. 4. Original section 81-885.24, Reissue Revised

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1 Statutes of Nebraska, is repealed.